

VZCZCXYZ0002
RR RUEHWEB

DE RUEHPE #2715/01 1931446
ZNR UUUUU ZZH
R 121446Z JUL 06
FM AMEMBASSY LIMA
TO RUEHC/SECSTATE WASHDC 1354
INFO RUEHBO/AMEMBASSY BOGOTA 3645
RUEHQT/AMEMBASSY QUITO 0532
RUEHLP/AMEMBASSY LA PAZ JUL SANTIAGO 0726
RUEHCV/AMEMBASSY CARACAS 9664
RUEHBU/AMEMBASSY BUENOS AIRES 2514
RUEHME/AMEMBASSY MEXICO 3414
RUEHBR/AMEMBASSY BRASILIA 6884
RUCPDO/DEPT OF COMMERCE WASHINGTON DC
RUEATRS/DEPT OF TREASURY WASHINGTON DC
RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC

UNCLAS LIMA 002715

SIPDIS

SENSITIVE
SIPDIS

DEPT FOR WHA/AND, WHA/EPSC, EB/IFD/OFD, EB/CBA, EB/IFD/OIA
TREASURY FOR OASIA/INL, DO/GCHRISTOPOLUS
COMMERCE FOR 4331/MAC/WH/MCAMERON
USTR FOR BHARMAN/DWEINER

E.O. 12958: N/A
TAGS: [EINV](#) [ECON](#) [ETRD](#) [PGOV](#) [PE](#)
SUBJECT: UPDATE ON ATPDEA DISPUTES

REF: A) Lima 2707 B) Lima 2056 C) Lima 1830

This cable contains sensitive business information. Please protect accordingly. Not for Internet distribution.

¶1. (SBU) Summary. Four years after the implementation of ATPDEA, the Peruvian Government has resolved six of the nine original ATPDEA disputes. The GOP is working to resolve the remaining ATPDEA cases -- LeTourneau, Engelhard and Princeton Dover -- as well as several other high profile cases, including Doe Run and GE. The GOP Disputes Coordinator is confident that LeTourneau and GE will be resolved before the inauguration of the next administration on July 28. End Summary.

LeTourneau and GE Close to Resolution

¶2. (SBU) GE: On July 6, the Constitutional Court issued a ruling in favor of General Electric, dismissing criminal charges against the 23 GE executives (Ref A). The case is not yet resolved, as the 4th Penal Court must now implement the Constitutional Court decision and expunge the case from the judicial docket. GOP Disputes Coordinator Aurelio Loret de Mola is confident that 4th Penal Court will finally resolve the case before July 28.

¶3. (SBU) LeTourneau: The GOP on July 6 published a Supreme Decree approving the Post-Sentence Agreement between the company and the GOP. This agreement is pending signature by three Ministers and LeTourneau. Roy LeTourneau plans to travel to Peru next week to sign the document. Once the agreement is signed, the Executive will issue an Urgent Decree, authorizing the \$10 million payment to the company. The GOP should issue payment to the LeTourneau Company rather than to Roy LeTourneau. Loret de Mola is certain that payment will be made before July 28.

The Gold Companies and Criminal Cases

¶4. (SBU) Engelhard: In January 2006, the Constitutional Court, in a 5-1 decision, ruled against Engelhard to close the civil case. Only the criminal proceeding remains, with the prosecutor in April 2006 recommending to the judges that the Engelhard executives be excluded from the criminal case. The judges have yet to make a

decision on whether to include the Engelhard executives, although Engelhard lawyers view inaction as a positive sign. According to Loret de Mola, the judges must review the cases of the other 200-plus defendants before they can drop the charges against the Engelhard executives. He is unsure how long this procedure may take, but noted that it could be more than one year.

¶5. (SBU) Princeton Dover: In August 2005, the Superior Court, in a 3-2 decision, ruled against Princeton Dover in its civil case. The company has appealed to the Constitutional Court. The Constitutional Court continues to refrain from issuing its ruling, arguing that it must first have a decision in the criminal case. Unlike in the Engelhard case, the prosecutor recommended that the Princeton Dover executives be included in the criminal case. This case has been in the investigative process for more than 6.5 years.

Asset Valuation and VAT issues

¶6. (SBU) Doe Run continues to work with the GOP to resolve two pending issues: the asset valuation of the company to determine tax liability and a VAT refund issue on materials exported (Ref B). Doe Run is working closely with Peru's Assessment Agency (CONATA) to finish its asset valuation. Bruce Neil, CEO of Doe Run, informed us that he is confident that the asset valuation will be completed by July 28. On the VAT refund issue, the GOP has determined that a legislative fix is necessary. Officials from the Ministry of Finance and Peru's Tax Authority (SUNAT) are drafting legislation to address bonded warehouses that will be debated by the next Congress (which begins in August).

¶7. (SBU) Although Doe Run's problems remain, the company issued a letter to members of the U.S. Congress, noting its strong support for the U.S.-Peru free trade agreement. Doe Run is working closely with the GOP and believes resolution will occur soon. In the letter, Doe Run urges the timely and favorable action on the FTA.

Comment

¶8. (SBU) Disputes Coordinator Loret de Mola has worked hard during the past year to resolve a number of commercial dispute cases. We expect that he will continue with his position after the change in Administration, as the GOP is committed to improving its investment climate. Resolving these cases and implementing the FTA will be key steps in the process.

STRUBLE